

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	Case No. 3:00-cr-065
vs.	:	
	:	JUDGE WALTER HERBERT RICE
BRIAN KEITH ALFORD,	:	
	:	
Defendant	:	

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS (DOC. #146) OF THE UNITED STATES MAGISTRATE JUDGE IN THEIR ENTIRETY; AND OVERRULING DEFENDANT'S OBJECTIONS THERETO (DOC. #149); OVERRULING WITH PREJUDICE DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO FED. R. CIV. P. 60(B) (3),(4), AND (6), AS INCORPORATED IN "JUDICIAL NOTICE OF ADJUDICATIVE FACTS" (DOC. #145)

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Based on the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge, filed July 13, 2011 (Doc. #146), as well as on a thorough *de novo* review of this Court's file and the applicable law, said judicial filing is adopted in its entirety. Petitioner's objections (Doc. #149) are overruled, and his Motion for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(b)(3),(4), and (6), as incorporated in his "Judicial Notice of Adjudicative Facts," (Doc. #145), is overruled with prejudice.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. As correctly stated by the Magistrate Judge, "Defendant has cited no substantive law which is contrary to the prior conclusion of this and the Court of Appeals. There is no prohibition --- constitutional, statutory, or in the Rules of Evidence or Criminal Procedure --- on the Government's proving an element of a crime by stipulation." Report and Recommendations, Doc. #146, at 2. That is exactly what transpired in the instant action, as shown by the following colloquy in the transcript of proceedings of February 26, 2002, during the Defendant's jury trial, Feb. 26, 2002 Tr. at 162-63.

THE COURT: Give me a moment. Am I correct that the stipulation is that on the day in question, June 5<sup>th</sup> of 2000, the deposits in Bank One National Association of Columbus, Ohio including the branch at 2000 East Third Street, Dayton, were insured by the Federal Deposit Insurance Corporation.

MS. LAFFERTY: Yes, your Honor.

THE COURT: Jeff, any problem stipulating that?

MR. McQUISTON: No.

THE COURT: Okay. That's stipulated as part of your case in chief. The jury will be notified.

In accordance with this stipulation, the Court instructed the jury as follows:

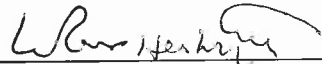
The following fact is established by agreement of counsel.

On June 5<sup>th</sup>, 2000, the deposits of Bank One National Association, Columbus, Ohio, including the branch at 2000 East Third Street, Dayton, Ohio, were insured by the Federal Deposit Insurance Corporation.

Feb. 28, 2002 Tr., at 99. Not surprisingly, no one objected to this stipulation.

Given that reasonable jurists would not disagree with the Court's conclusion that Defendant's motion is procedurally improper and substantively without merit, Petitioner is denied a certificate of appealability and denied leave to appeal *in forma pauperis*.

Date: September 20, 2011

  
WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record  
Defendant, *pro se*